

Lawrence W. Katz

Attorney

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William F. **Caton**, Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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_____ shall be either "published in" or
"readily ascertainable from" the published
schedule.

AT&T v. MCI, No. 93-1147, slip op. at 3 (D.D.C. July 7, 1993)
(emphasis **added**). For the Commission's convenience, a copy of that
decision is attached.

Bell Atlantic continues to urge the Commission to
eliminate the discrimination among competitors by abolishing the
distinction between dominant and non-dominant carriers. Instead,
it should apply streamlined tariffing rules to all carriers in

No. of Copies rec'd 249
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William F. **Caton**, Acting Secretary
July 15, 1993
Page 2

competitive geographical and product markets. That streamlining, however, may not waive the statutory obligation to file specific, easily-ascertainable rates for all services and not to allow secret arrangements that are inconsistent with those filed rates.

Please include this letter and attachment in the file of CC Docket No. 93-36. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lawrence W. Katz".

Lawrence W. Katz

cc: Kathleen B. **Levitz**
Gregory J. Vogt
James D. Schlichting
Donna **Lampert**

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUL 7 1993

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIAAMERICAN TELEPHONE AND
TELEGRAPH COMPANY,

Plaintiff,

v.

MCI TELECOMMUNICATIONS
CORPORATION,

Defendant.

Civil Action No. 93-1147 SSH

ORDER

Before the Court are plaintiff's application for a preliminary injunction and defendant's motion to dismiss or, alternatively, for a stay.' Upon careful consideration of the arguments of counsel at the hearing on June 30, 1993, and the entire record, the Court grants plaintiff's application and denies defendant's motion to dismiss.

On May 4, 1993, the Federal Communications Commission (the "FCC") ordered defendant, "to the extent it has not already done so, to file tariffs including the information required by section 203 for all of its interstate common carrier services." AT&T v. MCI Telecommunications Corp., File No. E-89-297, FCC No. 93-222 (May 4, 1993) ("FCC Order of May 4, 1993") (footnote omitted).

Section 203 of the Communications Act requires every communications common carrier to file tariffs with the FCC. 47 U.S.C. § 203 (1988). Section 203(a) establishes a mandatory filing

¹ Defendant's motion, which is ripe for resolution, presents substantially the same arguments as the arguments advanced in defendant's opposition to plaintiff's application for a preliminary injunction. Therefore, it does not warrant separate discussion.

obligation: **"Every** common carrier . . . shall . . . file with the Commission and . . . keep open for public inspection schedules showing all charges for itself . . . and showing the classifications, practices, and regulations affecting such charges." 47 U.S.C. § 203(a). Section 203(c) prohibits the provision of service at any charge other than that specified in the tariff. 47 U.S.C. § 203(c). Thus, this statute requires **"that** every communications common carrier file its rates with the **FCC."** AT&T v. FCC, 978 **F.2d** 727, 729 (D.C. Cir. 1992), cert. denied, 1993 U.S. LEXIS 4392 (June 21, 1993). Moreover, the rates must be "published **in,**" or "readily ascertainable **from,**" the filed schedules. See Regular Common Carrier Conference v. United States, 793 **F.2d** 376, 380 (D.C. Cir. 1986) (interpreting similar **rate-** filing provisions of the Interstate Commerce Act, 47 U.S.C. §§ 10,761-10,762). It is undisputed that defendant charges certain customers rates that are not specified in, or ascertainable from, its published schedules.

- Section 401(b) of the Communications Act provides:

If any person fails or neglects to obey any order of the Commission other than for the payment of money, while the same is in effect, the Commission or any party injured thereby . . . may apply to the appropriate district court of the United States for the enforcement of such order. **If**, after hearing, the court determines that the order was regularly made and duly served, and that the person is *in* disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such person or the officers, agents, or representatives of such order, or to enjoin upon it or them obedience to the same.

47 U.S.C. § 401(b).

To obtain preliminary relief under this section, plaintiff

must show **"that** (1) [there] is an FCC 'order' within the meaning of the Act, (2) the order was regularly made and duly served upon the defendant, (3) the defendant is in disobedience of the order, and (4) the party seeking the injunction has been injured by the defendant's disobedience." South Cent. Bell Tel. Co. v. Louisiana Pub. Serv. Comm'n, 744 F.2d 1107, 1114-15 (5th Cir. 1984), vacated on other grounds, 476 U.S. 1166 (1988); See also Southwestern Bell Tel. Co. v. Arkansas Pub. Serv. Comm'n, 738 F.2d 901 (8th Cir. 1984), vacated on other grounds, 476 U.S. 1167 (1986). The Court finds that plaintiff has shown each of these factors.* Accordingly, it hereby is

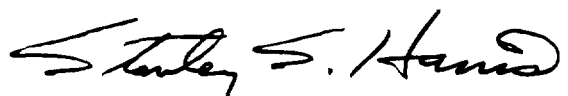
ORDERED, that plaintiff's application for a preliminary injunction is granted. It hereby further is

ORDERED, that defendant shall file promptly with the FCC tariffs setting forth all rates levied for its interstate common carrier services: all rates charged shall be either "published **in**" or "readily ascertainable **from**" the published schedule. It hereby further is

ORDERED, that defendant's motion to dismiss is denied.

² Defendant contends that it is not in violation of the FCC's Order of May 4, 1993, because that Order did not explicitly require it to file any tariff in addition to the amended tariff filed on January 28, 1993. Defendant asserts that the gravamen of plaintiff's complaint is an attack on the validity of the January 28, 1993, filing; the FCC, however, specifically declined to decide whether that tariff violated section 203. See FCC Order of May 4, 1993, at n.7. It is clear that this Court does not have jurisdiction to decide the validity of the January 28, 1993, tariff. See 47 U.S.C. § 204. Plaintiff is not, however, contesting the validity of the January 28, 1993 tariff. Rather, plaintiff contends that defendant's failure subsequently to file all of its charged rates in response to the FCC's Order of May 4, 1993, violates the clear mandate that defendant comply with section 203 of the Communications Act.

SO ORDERED.

A handwritten signature in black ink, reading "Stanley S. Harris". The signature is written in a cursive, flowing style with a large initial 'S'.

Stanley S. Harris
United States District Judge

Date: **JUL** 7 1993